

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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TALGINE SMALLS,	:	
	:	
Petitioner,	:	
	:	
-against-	:	<b><u>ORDER ADOPTING REPORT AND</u></b>
	:	<b><u>RECOMMENDATION</u></b>
UNITED STATES OF AMERICA,	:	No. 19-cv-0070 (KAM) (CLP)
	:	
Respondent.	:	
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**MATSUMOTO, United States District Judge:**

The Petitioner filed this miscellaneous action and moved to expunge her record of conviction, the sentence for which was imposed on May 10, 1996. (ECF No. 1.) The Court has reviewed Chief Magistrate Judge Cheryl Pollak's Report & Recommendation (ECF No. 5, the "R&R"), dated June 6, 2022, to which no party has objected. Because no party has objected to the R&R within the statutory 14-day period, the Court "need only satisfy itself that there is no clear error on the face of the record." See 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *Urena v. New York*, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001).

On clear error review, the Court agrees with and adopts the R&R's well-analyzed recommendation that Petitioner's motion seeking to expunge the record of her conviction (ECF No. 1) must be denied pursuant to the Federal First Offender Act and the District Court's lack of jurisdiction to grant Petitioner's

relief. See 18 U.S.C. § 3607(c) (providing narrow exceptions for certain drug offenders who have no prior convictions, have successfully completed probation, and were less than twenty-one years old at the time of the offense to have their records expunged); see also *Doe v. United States*, 833 F.3d 192, 195 (2d Cir. 2016) (vacating the District Court's decision to seal records of a conviction because the "District Court lacked jurisdiction to consider [Petitioner's] motion to expunge records of a valid conviction."). The parties' briefing do not dispute that Petitioner does not meet the narrow exceptions authorized by Congress to expunge a conviction under 18 U.S.C. § 3607(c). (See ECF No. 1 and ECF No. 4.)

#### **CONCLUSION**

For the foregoing reasons, and upon clear error review, the Court adopts Judge Pollack's Report and Recommendation. The Petitioner's motion is respectfully denied, and the petition is dismissed for lack of subject matter jurisdiction. Accordingly, the Court orders the Clerk of Court to mail a copy of this Order to Petitioner and note service on the docket and close this case.

**SO ORDERED.**

Dated: Brooklyn, New York  
July 5, 2021

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/s/  
**KIYO A. MATSUMOTO**  
United States District Judge  
Eastern District of New York